UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ST. LOUIS CARDINALS, LLC Plaintiff, vs. DOUGLAS J. LEWIS d/b/a STL PRODUCTS Defendant.	))))))))))	No.

COMPLAINT

Plaintiff St. Louis Cardinals, LLC, for its complaint against Defendant Douglas J. Lewis d/b/a STL Products, alleges as follows:

PARTIES

1. Plaintiff St. Louis Cardinals, LLC owns the Major League Baseball club known as the ST. LOUIS CARDINALS (the "CARDINALS Club," "Club" or "Plaintiff"). Plaintiff has its principal place of business at 250 Stadium Plaza, St. Louis, Missouri 63102, and is organized as a limited liability company under the laws of the State of Missouri.

2. Upon information and belief, Defendant is an individual residing at 4143 Fox Crossing, Florissant, Missouri 63034. Upon information and belief, Defendant has been and is engaged in the business of selling merchandise, including clothing and various novelty items, through direct solicitation as well as an online retail business designated as "STL Products," formerly located at www.stlproducts.com, and now located at www.cafepress.com/stlproducts ("Defendant's Sites").

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over the federal trademark claims

pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338. This Court has supplemental jurisdiction over the related state law claims pursuant to 28 U.S.C. § 1367.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because Defendant resides in this district and a substantial part of the events giving rise to the claims stated in this Complaint occurred in this district.

FACTS

The CARDINALS Marks

5. The CARDINALS Club was founded in 1882 and, since 1900, has been known as ST. LOUIS CARDINALS and CARDINALS. The CARDINALS Club is one of the most successful Major League Baseball clubs in history, with seventeen (17) WORLD SERIES championship appearances and ten (10) WORLD SERIES championship titles.

6. For many decades and long prior to any use by Defendant of the marks at issue in this litigation, Plaintiff, its predecessors and their licensees and/or sponsors have used marks which comprise or contain the words ST. LOUIS CARDINALS, CARDINALS, CARDINAL or CARDS, often appearing in the Club's team color red, and/or a depiction of various cardinal bird designs, alone or with other word or design elements, including, without limitation, the marks shown in Exhibit A attached hereto (the "CARDINALS Marks"), to identify its baseball club, its baseball game and exhibition services, and a wide variety of goods and services.

7. Plaintiff owns numerous federal trademark registrations for many of its CARDINALS Marks. A list of the registrations is attached as Exhibit B. All of the listed registrations, with the exception of Reg. Nos. 2,778,410; 2,565,213; 2,597,277; 2,563,494; 2,641,836; 2,565,162; and 2,619,845, are incontestable.

8. Long prior to any use by Defendant of the marks at issue in this litigation,

Plaintiff, its predecessors and their licensees and/or sponsors have extensively promoted and advertised goods and services bearing the CARDINALS Marks, and have sold such goods and offered such services in commerce throughout the United States.

9. As a result of the extensive use of the CARDINALS Marks on or in connection with merchandise and baseball games and services sold and/or rendered in the United States, such marks have, for many decades and long prior to any use made by Defendant, functioned as unique identifiers and synonyms in the public mind for Plaintiff and its CARDINALS Club.

10. As a result of the extensive sales and promotions of its goods and services bearing the CARDINALS Marks, Plaintiff has built up a reputation for excellence and high quality and enormous goodwill in these trademarks of great value to Plaintiff. Through long use and extensive promotion, the CARDINALS Marks have become famous among the relevant consuming public.

Defendant's Unlawful Activities

11. Upon information and belief, Defendant owns and operates a retail business designated "STL Products" which formerly included a website location at www.stlproducts.com and now includes a retail site at www.cafepress.com/stlproducts (collectively "Defendant's Sites"). According to Defendant's Sites, STL Products creates and sells promotional merchandise associated with the city of St. Louis.

12. Without authorization or permission from Plaintiff, Defendant is and has been selling and offering for sale a wide variety of merchandise bearing trademarks, designations, logos and designs identical and/or confusingly similar to Plaintiff's CARDINALS Marks. (Printouts of Defendant's Sites showing some of his infringing uses are attached hereto as Exhibit C.)

13. For instance, Defendant has offered for sale, sold, offers for sale and/or sells merchandise, including mugs, t-shirts and mousepads, bearing the designation I ♥ ST. LOUIS CARDINALS ("St. Louis Cardinals" obviously being the name of Plaintiff's CARDINALS Club), in the color red which is a team color of Plaintiff, with the word CARDINALS depicted in the same stylized script font used and registered by Plaintiff and depicting the design of a cardinal bird emanating from the letter C and closely resembling one of Plaintiff's famous cardinal bird designs.

14. Likewise, Defendant has offered for sale, sold, offers for sale and/or sells additional merchandise -- including baseball jerseys, t-shirts, golf shirts, infant creepers, bibs, sweatshirts, baseball caps, aprons, messenger and tote bags, plush dolls, mugs, mousepads, stickers, buttons, magnets and dog shirts – bearing the designation GO CARDS or GO CARDS ST. LOUIS BASEBALL (obvious affectionate rallying cries for the CARDINALS Club) in the color red which is a team color of Plaintiff, and often with the word CARDS depicted in the same stylized script font long used by Plaintiff and depicting a design of a cardinal bird emanating from the letter C and closely resembling one of Plaintiff's famous cardinal bird designs.

15. Defendant's use of the I ♥ ST. LOUIS CARDINALS, GO CARDS and GO CARDS ST. LOUIS BASEBALL designations, often in the same stylized script and with a similar cardinal bird design as used by Plaintiff, are clearly intended to trade upon the fame and goodwill of Plaintiff's CARDINALS Club and CARDINALS Marks. Because of the close and deliberate similarities between Defendant's marks and Plaintiff's CARDINALS Marks, Defendant's use is likely to cause confusion, mistake or deception as to the source or origin of Defendant's goods, and is likely to lead or cause consumers to the false impression that

Defendant's goods are associated or affiliated with, authorized, endorsed or sponsored by, or that Defendant is a sponsor of, the CARDINALS Club.

16. Although Defendant has no right to use the aforesaid names, marks or designs, he nonetheless seeks to claim trademarks rights in these designations by placing a service mark notice -- SM -- proximate to his infringing designations. Defendant has also filed a federal trademark application, Application No. 78/616,520, to register the mark GO CARDS for "clothing namely; t-shirts, sweatshirts, caps, pants, socks, shoes, gloves, underwear" and that application is presently the subject of an opposition proceeding commenced by Plaintiff in the United States Patent and Trademark Office. In addition, unbeknownst to Plaintiff, Defendant obtained state trademark registrations for a variety of equally infringing marks designed to associate himself with the CARDINALS Club, including Missouri state trademark registrations covering the marks I LOVE ST. LOUIS CARDINALS, GO CARDS ST. LOUIS BASEBALL, GO CARDS, GO CARDINALS, ST. LOUIS BASEBALL, CARD BALL, CARD BALL BIRD, and a Red Bird Design with Baseball Glove, and Illinois state trademark registrations covering the marks ILLINOIS CARDINALS and EAST ST. LOUIS CARDINALS. (The mark I ♥ ST. LOUIS CARDINALS together with all of the above-referenced marks registered by Defendant shall be collectively referred to herein as "Defendant's Infringing Marks").

17. Upon information and belief, Defendant has sought to register, registered and/or used Defendant's Infringing Marks in bad faith and in willful and deliberate violation of Plaintiff's trademark rights, in an intentional effort to cause confusion among purchasers and potential purchasers as to the source, origin or affiliation of Defendant's products, and in order to trade upon the valuable goodwill created by and associated with Plaintiff and its CARDINALS Club and CARDINALS MARKS.

18. Plaintiff has, on multiple occasions, notified Defendant of its rights in the famous CARDINALS Marks and demanded that Defendant cease his infringing conduct and use and registration of Defendant's Infringing Marks, but Defendant has refused and has continually offered to "license" Defendant's Infringing Marks to Plaintiff. Although at one point Defendant wrote to Plaintiff's counsel to "Please advise your client that the Lord has spoken to me and that 'Exclusive Rights' belongs [sic] to the St. Louis Cardinals," Defendant has nevertheless continued to seek to "license" Defendant's Infringing Marks to Plaintiff (explaining that the Lord has indicated to him that Plaintiff could have an exclusive license).

19. Upon information and belief, in an effort to conceal his true intent to trade upon the goodwill of Plaintiff's CARDINALS Marks, Defendant has created various flyers or promotional materials using the marks GO CARDINALS, GO CARDS, I LOVE THE CARDINALS and various designs of cardinal birds in connection with the phone number 1-800-327-2263, which is owned by the North American Bird Banding Program (the "NABBP"), a federally funded program jointly administered by the U.S. Department of the Interior and the Canadian Wildlife Service. Ironically, the NABBP's function is to track migratory birds throughout the United States and Canada, but in fact, cardinals are not migratory birds, often never traveling more than one mile from where they were born. Upon information and belief, Defendant has no connection to or authorization from the NABBP to promote such organization, and has created these materials purely as a pretext designed to disguise his true motivation to sell merchandise associated with the CARDINALS Club.

20. Upon information and belief, by virtue of its unlawful conduct, Defendant has made substantial profits and gains to which he is not in law or equity entitled.

21. Upon information and belief, unless enjoined by this Court, Defendant will

continue to ignore Plaintiff's rights in its CARDINALS Marks. As a result of Defendant's unlawful conduct, Plaintiff has been damaged and has suffered, and continues to suffer, immediate and irreparable injury for which it has no adequate remedy at law.

COUNT I
(Federal Trademark Infringement)

22. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-21 above with the same force and effect as if set forth fully herein.

23. Defendant's acts described above constitute infringement of registered trademarks in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

COUNT II
(False Designation of Origin)

24. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1-21 above with the same force and effect as if set forth fully herein.

25. Defendant's acts described above constitute the use in commerce of false designations of origin in violation of section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

COUNT III
(Unfair Competition)

26. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-21 above with the same force and effect as if set forth fully herein.

27. Defendant's acts described above constitute unfair competition under the common law of the State of Missouri.

COUNT IV
(Missouri Merchandising Practices Act)

28. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-21 above with the same force and effect as if set forth fully herein.

29. Defendant's acts described above constitute unlawful practices under the Missouri Merchandising Practices Act, Missouri Rev. Stat. §§ 407.010 – 407.1370.

COUNT V
(Cancellation of Missouri State Registrations)

30. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-21 above with the same force and effect as if set forth fully herein.

31. As set forth above, Defendant has obtained the following Missouri state registrations for marks confusingly similar to Plaintiff's CARDINAL Marks:

(a) I LOVE ST. LOUIS CARDINALS, Registration No. S17,029;

(b) GO CARDS ST. LOUIS BASEBALL, Registration No. S16,927;

(c) GO CARDS, Registration No. S16,627;

(d) GO CARDINALS, Registration No. S16,920;

(e) ST. LOUIS BASEBALL (stylized), Registration No. S16,273;

(f) CARD BALL, Registration No. S15,724;

(g) CARD BALL BIRD, Registration No. S15,778; and

(h) Red Bird Design with Baseball Glove, Registration No. S15,746.

32. Defendant's registrations as set forth above should be cancelled from the register by the Secretary of State pursuant to Missouri Rev. Stat. § 417.041.

COUNT VI
(Cancellation of Illinois State Registrations)

33. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-21 above with the same force and effect as if set forth fully herein.

34. As set forth above, Defendant has obtained the following Illinois state registrations for marks confusingly similar to Plaintiff's CARDINAL Marks:

(a) ILLINOIS CARDINALS, Registration No. 89156

(b) EAST ST. LOUIS CARDINALS, Registration No. 89212

35. Defendant's registrations as set forth above should be cancelled from the register by the Secretary of State pursuant to 765 ILCS § 1036/45.

WHEREFORE, Plaintiff respectfully requests the following relief:

A. That Defendant and his agents, servants, representatives, employees, successors and assigns, and all those persons or entities in active concert or participation with any of them who receive actual notice of the injunctive order, be enjoined, preliminarily and permanently, from using any marks, stylizations, fonts or designs confusingly similar to the CARDINALS Marks, including without limitation Defendant's Infringing Marks, or any other marks, stylizations, font or designs identical or confusingly similar to any other marks of the CARDINALS Club, Major League Baseball Properties, Inc., the Office of the Commissioner of Baseball or any of the other 30 Major League Baseball Clubs (the "MLB Entities"), including, without limitation, those marks and designs shown in Exhibit A hereto, or committing any other act which falsely represents or suggests or which has the effect of falsely representing or suggesting that Defendant's goods or services are associated with, authorized, endorsed or sponsored by, or that Defendant is a sponsor of, the CARDINALS Club or the MLB Entities.

B. That all merchandise, signs, wrappings, catalogs, decals, flyers, brochures, or other goods or printed matter or advertising or promotional materials bearing any marks, stylizations, fonts or designs confusingly similar to the CARDINALS Marks be delivered up for destruction or other disposition at Plaintiff's sole discretion.

C. That Defendant be directed to file with the Court and serve upon Plaintiff, within 30 days after entry of final judgment, a report in writing and under oath setting forth in detail the manner and form in which Defendant has complied with the provisions set forth in Paragraphs A and B above.

D. That Plaintiff be granted an equitable accounting of Defendant's profits and awarded judgment in an amount reflecting Plaintiff's damages or Defendant's profits, whichever is greater, arising from Defendant's infringing acts, such damages to be trebled pursuant to 15 U.S.C. § 1117 by reason of the willfulness of Defendant's acts, together with interest therein.

E. That the Secretary of State of Missouri be directed to cancel the following Missouri state registrations issued to Defendant:

(1) I LOVE ST. LOUIS CARDINALS, Registration No. S17,029;

(2) GO CARDS ST. LOUIS BASEBALL, Registration No. 16,927;

(3) GO CARDS, Registration No. S16,627;

(4) GO CARDINALS, Registration No. S16,920;

(5) ST. LOUIS BASEBALL (stylized), Registration No. S16,273;

(6) CARD BALL, Registration No. S15,724;

(7) CARD BALL BIRD, Registration No. 15,778; and

(8) Red Bird Design with Baseball Glove, Registration No. S15746.

F. That the Secretary of State of Illinois be directed to cancel the following Illinois state registrations issued to Defendant:

(1) ILLINOIS CARDINALS, Registration No. 89156

(2) EAST ST. LOUIS CARDINALS, Registration No. 89212

G. That the Court award Plaintiff its reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a), together with the costs of this action.

H. That Plaintiffs be granted such other and further relief as the Court deems just and manner and form in which Defendant has complied with the provisions set forth in Paragraphs A and B above.

D. That Plaintiff be granted an equitable accounting of Defendant's profits and awarded judgment in an amount reflecting Plaintiff's damages or Defendant's profits, whichever is greater, arising from Defendant's infringing acts, such damages to be trebled pursuant to 15 U.S.C. § 1117 by reason of the willfulness of Defendant's acts, together with interest therein.

E. That the Secretary of State of Missouri be directed to cancel the following Missouri state registrations issued to Defendant:

(1) I LOVE ST. LOUIS CARDINALS, Registration No. S17,029;

(2) GO CARDS ST. LOUIS BASEBALL, Registration No. 16,927;

(3) GO CARDS, Registration No. S16,627;

(4) GO CARDINALS, Registration No. S16,920;

(5) ST. LOUIS BASEBALL (stylized), Registration No. S16,273;

(6) CARD BALL, Registration No. S15,724;

(7) CARD BALL BIRD, Registration No. 15,778; and

(8) Red Bird Design with Baseball Glove, Registration No. S15746.

F. That the Secretary of State of Illinois be directed to cancel the following Illinois state registrations issued to Defendant:

(1) ILLINOIS CARDINALS, Registration No. 89156

(2) EAST ST. LOUIS CARDINALS, Registration No. 89212

G. That the Court award Plaintiff its reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a), together with the costs of this action.

H. That Plaintiff be granted such other and further relief as the Court deems just and proper.

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